

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL RESOURCES
(99AG23542),

Plaintiff,

vs.

GRAIN PROCESSING CORPORATION,
an Iowa Corporation,

Defendant.

LAW NO. CVCV016788

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claims against Defendant Grain Processing Corporation (GPC) states as follows:

Introduction

1. The IDNR seeks the assessment of civil penalties and injunctive relief against GPC for air pollution control violations committed at or in relation to GPC's grain processing facility located in Muscatine, Muscatine County, Iowa.

2. Count I seeks the assessment of civil penalties and injunctive relief against GPC for violations of Prevention of Significant Deterioration (PSD) requirements. GPC illegally modified its method of operations resulting in significant increases in particulate matter (PM), without complying with Iowa and federal requirements to prevent significant deterioration of air quality.

3. Count II seeks the assessment of civil penalties and injunctive relief against GPC for violations of Construction Permit No. 90-A-309 by operating the Maltrin No. 5 Spray Dryer,

Stack A, in excess of the allowable annual operating hours, and for violations of Construction Permit No. 90-A-310 by operating Maltrin No. 5 Spray Dryer, Stack B, in excess of the allowable annual operating hours and in excess of the annual emission limitations for particulate matter.

Parties

4. The State of Iowa is a sovereign state of the United States of America.
5. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
6. Grain Processing Corporation is an Iowa corporation authorized to do business in the State of Iowa.

Jurisdiction

Air Pollution Control

7. The IDNR is the state agency with the duty to prevent, abate, or control air pollution. Iowa Code § 455B.132. The specific administrative and enforcement duties of the IDNR director relating to air pollution control are contained, in part, in Iowa Code sections 455B.134(1)-(13).
8. The IDNR director is authorized to grant construction or operation permits for new, modified, or existing air contaminant sources and for related control equipment. Iowa Code § 455B.134(3).
9. The Iowa Environmental Protection Commission (EPC) is authorized to adopt rules for the abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2). The rules may include those that are necessary to obtain approval of the state implementation plan (SIP) under

section 110 [42 U.S.C. § 7410] of the federal Clean Air Act. Id. Air pollution control rules are contained in 567 Iowa Admin. Code chapters 20 - 29, and 31.

10. A permit may be issued subject to conditions which shall be specified in writing including but not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. 567 Iowa Admin. Code 22.3(3).

11. If any order, permit or rule of the IDNR is being violated, the Attorney General shall, at the request of the IDNR director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day such violation continues, or both such injunctive relief and civil penalty. Iowa Code § 455B.146.

General Definitions

12. "Air contaminant" means "dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof." Iowa Code § 455B.131(1).

13. "Air contaminant source" means "any and all sources of emission of air contaminants whether privately or publicly owned or operated." Iowa Code § 455B.131(2).

14. "Air pollution" means "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property." Iowa Code § 455B.131(3).

15. "Emission" means "release of one or more air contaminants into the outside atmosphere." Iowa Code § 455B.131(6).

16. "Major stationary source" means "a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department [IDNR] or the administrator of the United States [E]nvironmental [P]rotection [A]gency [EPA]." Iowa Code § 455B.131(7).

17. "Potential to emit" means "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department [IDNR]." Iowa Code § 455B.131(10); see also 567 Iowa Admin. Code 20.2.

Prevention of Significant Deterioration (PSD)

18. The federal Clean Air Act requires the EPA to establish National Ambient Air Quality Standards (NAAQS). 42 U.S.C. § 7409(a)(1). Primary and secondary NAAQS are prescribed to protect the public health and welfare, respectively. 42 U.S.C. §§ 7409(b)(1) and (2); 40 C.F.R. § 50.2(b). Primary and secondary NAAQS have been adopted for six pollutants: sulfur oxides (sulfur dioxide)(SO₂), particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM₁₀) or less than or equal to 2.5 micrometers (PM_{2.5}), carbon monoxide (CO), ozone (O₃), nitrogen dioxide (NO₂), and lead (Pb). 40 C.F.R. §§ 50.4 - 50.12. All areas of the State of Iowa have been designated as being in attainment or unclassifiable for each primary and secondary NAAQS. 40 C.F.R. § 81.316.

19. For areas which are designated in attainment with NAAQS or unclassifiable, the federal Clean Air Act includes a program to prevent significant deterioration (PSD) of air quality. 42 U.S.C. §§ 7470-7479. Preconstruction requirements are imposed on any major emitting facility to prevent significant deterioration of the air quality. 42 U.S.C. § 7475.

20. For purposes of the PSD program, "construction" also includes "modification," as defined in 42 U.S.C. section 7411(a), of any source or facility. 42 U.S.C. § 7479(2)(C).

"Modification" means "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." 42 U.S.C. § 7411(a)(4).

21. EPA rules implementing the PSD program are contained, in part, in 40 C.F.R. section 52.21. The EPA has approved the State of Iowa's program to implement PSD permit requirements. 52 Fed.Reg. 23981 (1987).

22. No person shall construct, install, reconstruct or alter any equipment or control equipment without first obtaining a construction permit or permits required pursuant to 567 Iowa Admin. Code 22.4. 567 Iowa Admin. Code 22.1(1).

23. IDNR rule 567 Iowa Admin. Code 22.4 adopts the federal PSD regulations contained in 40 C.F.R. section 52.21, as amended through March 12, 1996, except for section 52.21(a) (plan disapproval), section 52.21(q) (public participation), section 52.21(s) (environmental impact statement), and section 52.21(u) (delegation of authority), as provided in 567 Iowa Admin. Code 22.4(1).

24. The requirements of 40 C.F.R. sections 52.21(j)-(r) shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation [under the Clean Air Act] that it would emit. 40 C.F.R. § 52.21(i)(2).

25. "Major stationary source" means any of several designated "stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant

subject to regulation [under the Clean Air Act]" or "any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation [under the Clean Air Act]." 40 C.F.R. §§ 52.21(b)(1)(i)(a) and (b).

26. "Stationary source" means "any building, structure, facility, or installation which emits or may emit any pollutant subject to regulation [under the Clean Air Act]." 40 C.F.R. § 52.21(b)(5).

27. "Major modification" means "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation [under the Clean Air Act]" 40 C.F.R. § 52.21(b)(2)(i).

28. "Significant" means "in reference to a net emissions increase or the potential of a source to emit," emissions that would equal or exceed inter alia 25 tons per year (tpy) of particular matter (PM) or 15 tpy of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM₁₀). 40 C.F.R. § 52.21(b)(22)(i).

29. "Net emissions increase" means the amount by which the sum of "any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and . . . [a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable" exceeds zero. 40 C.F.R. §§ 52.21(b)(3)(i)(a) and (b).

30. A major modification shall apply best available control technology (BACT) for each pollutant subject to regulation under the Clean Air Act for which it would result in a significant net emissions increase at the source. 40 C.F.R. § 52.21(j)(3).

31. "Best available control technology" [BACT] means "an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under [the Clean Air Act] . . . which would be emitted from any proposed major stationary source or major modification" which the IDNR "on a case-by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques. . . ." 40 C.F.R. § 52.21(b)(12).

32. The owner or operator of a proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, would not cause or contribute to air pollution in violation of any NAAQS or any maximum allowable increase over the baseline concentration in any area. 40 C.F.R. §§ 52.21(k)(1) and (2).

33. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required by PSD review. 40 C.F.R. § 52.21(n).

Facts

GPC's Grain Processing Facility

34. GPC owns and operates a grain processing facility located at 1600 Oregon Street, Muscatine, Iowa.

35. At its facility, GPC processes grain into ethanol, various feed and food products. The facility includes over 300 emission units, i.e., pieces of equipment which emit or have the potential to emit various air pollutants.

36. On September 13, 1990, the Iowa Department of Water, Air and Waste Management (predecessor agency of the IDNR) issued Construction Permit No. 90-A-309 to GPC for installation of a spray dryer, designated by GPC as the Maltrin No. 5, Spray Dryer, with Emission Point No. 168, Stack A. The air pollution control equipment for the emission unit was a packed bed scrubber with a 99% efficiency rating.

37. On September 13, 1990, the Iowa Department of Water, Air and Waste Management (predecessor agency of the IDNR) also issued Construction Permit No. 90-A-310 to GPC for installation of a spray dryer, designated by GPC as the Maltrin No. 5, Spray Dryer, with Emission Point No. 169, Stack B. The air pollution control equipment for the emission unit was a packed bed scrubber with a 99% efficiency rating.

38. Construction Permit Nos. 90-A-309 and 90-A-310 both included an operating limit of 5256 hours per year and an emission limit of 12.2 tons of total suspended solids (particulate matter) per year. These operating and emission limits were included so as to insure that there would not be a significant increase in emissions, thereby, avoiding the need for GPC to comply with PSD requirements.

39. Soon after start-up of the Maltrin No. 5 Spray Dryer, GPC began to change its method of operation and increased its operation to a rate that would, over the course of a year, exceed the annual hourly operating limit and eventually result in excess particulate matter emissions.

40. Since at least as early as May 1992, GPC has exceeded its annual hourly operating limit of 5256 hours per year for Stack A of the Maltrin No. 5 Spray Dryer.

41. Since at least as early as May 1992, GPC has exceeded its annual hourly operating limit of 5256 hours per year for Stack B of the Maltrin No. 5 Spray Dryer.

42. For at least the period from July 1992 through April 2005, GPC exceeded its particulate matter emission limitation for Stack B of the Maltrin No. 5 Spray Dryer.

43. For at least the period from February 1993 through November 1994, GPC's particulate matter emissions from Stack B combined with the emissions from Stack A exceeded 25 tons per year.

44. GPC failed to apply for and obtain a PSD permit for the increased particulate emissions from Stacks A and B of the Maltrin No. 5 Spray Dryer.

45. GPC failed to demonstrate that the emission increases would not cause or contribute to air pollution in violation of any NAAQS or any maximum allowable increase over the baseline concentration in the area.

COUNT I

Prevention of Significant Deterioration (PSD) Violations

46. The GPC facility at Muscatine, Iowa, is located within an area designated as either in attainment with primary and secondary NAAQS or unclassified. 40 C.F.R. § 81.316.

47. The GPC facility is a "major stationary source" as defined in Iowa Code section 455B.131(7) and 40 C.F.R. sections 52.21(b)(1)(i)(a) and (b).

48. GPC's change in methods of operation by increasing its hours of operation of the No. 5 Spray Dryer, Stacks A and B, constituted a "modification" as defined in 42 U.S.C. sections 7411(a)(4) and 7479(2)(C), resulted in a "net emissions increase," as defined in 40 C.F.R. sections 52.21(b)(3)(i)(a) and (b), which was "significant," as defined in 40 C.F.R. section

52.21(b)(22)(i), and constituted a "major modification" as defined in 40 C.F.R. section 52.21(b)(2)(i).

49. GPC changed its method of operation by increasing its hours of operation of the No. 5 Spray Dryer, Stacks A and B, without applying for and obtaining a PSD permit in violation of 567 Iowa Admin. Code 22.1(1) and 22.4; and the requirements of 40 C.F.R. sections 52.21(i)(2), 52.21(j)(3), 52.21(k)(1), 52.21(k)(2), and 52.21(n).

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 22.1(1), 22.4; and 40 C.F.R. sections 52.21(i)(2), 52.21(j)(3), 52.21(k)(1), 52.21(k)(2), and 52.21(n); not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. permanently enjoin Defendant Grain Processing Corporation from further violations of 567 Iowa Admin. Code 22.1(1), 22.4; and 40 C.F.R. sections 52.21(i)(2), 52.21(j)(3), 52.21(k)(1), 52.21(k)(2), and 52.21(n).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

COUNT II

Violations of Construction Permit Nos. 90-A-309 and 90-A-310

50. GPC has repeatedly exceeded the annual hourly operating limit for the Maltrin No. 5 Spray Dryer, Stack A, in violation of Construction Permit No. 90-A-309.

51. GPC has repeatedly exceeded the annual hourly operating limit for the Maltrin No. 5 Spray Dryer, Stack B, in violation of Construction Permit No. 90-A-310.

52. GPC has repeatedly exceeded its particulate matter emission limitation for the Maltrin No. 5, Spray Dryer, Stack B, in violation of Construction Permit No. 90-A-310.

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

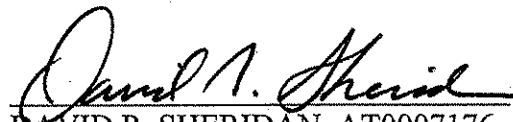
a. assess a civil penalty against Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.146 for each day of violation of Construction Permit Nos. 90-A-309 and 90-A-310, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. permanently enjoin Defendant Grain Processing Corporation from further violations of Construction Permit Nos. 90-A-309 and 90-A-310.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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